IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Crl.L.P..No. 197 of 2007()

ST.1107/2005 of JUDICIAL FIRST VCLASS MAGISGTRATE COURT II, PATHANAMTHITTA

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PETITIONER/COMPLAINANT:

ESSEN BANKERS, THAVALATHIL BUILDINGS,
PATHANAMTHITTA. REP. BY ITS PARTNER,
M.K.VARATHARAJAN, MANAPILLY HOUSE,
PRAMADOM, PATHANAMTHITTA.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS: STATE & ACCUSED.

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1. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. YESODHARA PANIKAR, MARATHOR HOUSE, VALLIKODU P.O., PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI. P. RAVINDRA BABU -R1

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 26/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 197 OF 2007

Dated this the 26th day of March, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in S.T. No. 1107 of 2005 on the file of the Judicial First Class Magistrate's Court-II, Pathanamthitta. The petitioner is the complainant.

2. It is stated in the complaint that the second respondent borrowed an amount of Rs.65,000/- from the petitioner - complainant and issued Ext.P2 cheque towards discharge of the said liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the second respondent. After complying with the statutory provisions, the petitioner filed the complaint. To prove the case against the second respondent - accused, the partner of the petitioner - firm was examined as PW.1 and Exts.P1 to P9 were produced. No oral or documentary evidence was adduced on the side of the defence. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the allegations in the complaint, the

second respondent - accused stated that the cheque in question was issued as security for the loan amount she had received from the complaint- firm on the basis of a voucher and loan account. The trial court found that the presumption available under Sections 118 and 139 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") has been rebutted by the accused proving that the cheque in question was not issued in discharge of any legally enforceable debt as contemplated under Section 138 of the Act and hence acquitted the accused.

3. Learned counsel appearing for the petitioner submits that the transaction between the petitioner and the second respondent was proved by adducing evidence before the court below, especially the voucher and the loan account and hence, the court below went wrong in acquitting the second respondent.

4. After going through the impugned judgment and the contentions raised by the learned counsel appearing for the petitioner, this Court is of the view that the court below had considered the entire evidence and found that the petitioner failed to prove that Ext.P2 cheque was issued in discharge of any legally enforceable debt as contemplated under Section 138 of the Act.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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